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Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of)	MM DOCKET No. 93-135
)	
THE PETROLEUM V. NASBY CORPORATION)	File No. BRH-890601VB
)	
For Renewal of Station WSWR (FM))	
Shelby, Ohio)	
)	
THE PETROLEUM V. NASBY CORPORATION)	File Nos. BTCH-921019HX
)	and BTCH-921019HY
For Transfer of Control of Station)	
WSWR (FM), Shelby, Ohio)	
)	
)	
)	

Ann C. Farhat, on behalf of The Petroleum V. Nasby Corporation, Norman J. Goldstein, James W. Shook and Y. Paulette Laden, on behalf of the Chief Mass Media Bureau.

SUMMARY DECISION OF ADMINISTRATIVE LAW JUDGE
EDWARD LUTON

Issued: March 21, 1997 ; Released: March 24, 1997

I. Introduction

1. In The Petroleum V. Nasby Corporation, 11 FCC Rcd. 3495 (1996), the Commission remanded this proceeding to "facilitate a determination of whether [Thomas L.] Root may potentially influence the licensee's affairs in the event that WSWR(AM)'s license is renewed." The Review Board had previously granted the Nasby renewal application, subject to the condition that members of Thomas L. Root's immediate family divest their ownership in Nasby in light of Root's criminal convictions. See, The Petroleum V. Nasby Corporation, 10 FCC Rcd. 6029, recon. granted in part, 10 FCC Rcd. 9964 (Rev. Bd. 1995).

2. On August 2, 1996, Nasby filed its Motion for Summary Decision and Grant of the Renewal and Transfer of Control Applications of The Petroleum V. Nasby Corporation. The Mass Media Bureau filed its comments in support of that motion on August 16, 1996. Finally, on February 26, 1997, Nasby supplemented its submissions with an amendment to the transfer of control applications (File Nos. BTCH-921018HX and BTCH-921018HY). The amendment provides the transferee qualification information required by FCC Form 315 relative to the Trustee of the Root Family Irrevocable Trust and provides a copy of the trust agreement itself.

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The evidence establishes that there is no genuine issue of material fact for determination at hearing. The motion for summary decision will be granted. Section 1.251(a)(1) of the Commission's Rules.

II. Facts

3. Kathy G. Root owns 33 shares of Nasby stock in her own name, and is the custodian of 50 shares of Nasby stock for the benefit of two of her minor children born to her and her spouse, Thomas L. Root. PVN Ex. 6, p. 1. Arlene M. Geer, the mother of Kathy G. Root, is the Trustee of three trusts formally established in December, 1987, by Thomas L. and Kathy G. Root, for the benefit of their minor children, Thomas P.J. Root, Leslie J.L. Root, and Travis S.C. Root. PVN Ex. 7, pp. 1-2. The trusts, however, were not funded with Nasby stock until June 1989. According to Kathy G. Root, the trusts were established as part of estate planning undertaken by her and Thomas L. Root, and the stock transfers were structured so as to permit the transfers without exceeding the \$10,000 per donee gift tax ceiling, considering the fair market value of Nasby stock at the time of \$400 per share. Id.

4. Both Kathy G. Root and Arlene M. Geer state that there has never been any discussion, agreement or understanding, with Thomas L. Root, that the stock transfers were effectuated in order to enable him to allocate control over Nasby, then, now or in the future. Both further state that there has never been any attempt by Thomas L. Root to exercise or exert control over Nasby by virtue of the Nasby stock held by Kathy G. Root in her own name, or by Kathy G. Root and Arlene M. Geer, as custodians of Nasby stock held for the benefit of the minor children of Thomas L. and Kathy G. Root. PVN Ex. 6, pp. 2-3; PVN Ex. 7, pp. 1-2.

5. Joanne L. Root, the mother of Thomas L. Root, owns 15 shares of Nasby stock in her own name, and 75.25 shares of Nasby stock, with her spouse, Thomas F. Root. Thomas F. Root individually owns five (5) shares of Nasby stock. Seventy and 25/100th shares of the Nasby stock jointly owned by Joanne L. Root and Thomas F. Root is being transferred, subject to FCC approval, to the law firm of Ginsburg, Feldman & Bress Chartered. Joanne L. Root has also served as a member of the three-person Nasby Board of Directors and as Secretary of Nasby. PVN Ex. 8, p.1.

6. Joanne L. Root states that she and her spouse purchased 70.25 shares of Nasby stock from their son, Thomas L. Root, for \$28,000, in June 1989. According to Joanne L. Root, Thomas L. Root was experiencing financial difficulties and needed the funds for obligations on his airplane and other obligations. PVN Ex. 8, pp 2-3. Sometime after Thomas L. Root's airplane crash in July, 1989, Joanne L. Root and her spouse agreed to pledge the 70.25 shares of stock they purchased in June, 1989, to the Ginsburg law firm so that it would continue to provide legal services to Thomas L. Root in connection with matters that Joanne L. Root initially believed to involve her son's representation of clients. When her son was unable to pay fees to the firm, the firm exercised its right under the Pledge Agreement to seek the pledged stock, which is the subject of the two transfer of control applications pending in the instant proceeding, PVN Ex. 8, p.4. At all times, since the pledged stock was purchased in June, 1990, up to and including the

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present day, the voting rights have been retained by Joanne L. Root and her spouse, free and clear from any potential influence and control by Thomas L. Root for the law firm. *Id.*

7. The facts show that there has never been any attempt by Thomas L. Root to allocate or exert control over Nasby by virtue of his relationship to Nasby principals Kathy G. Root, Arlene M. Geer and Joanne L. Root. Furthermore, Nasby contemplates significant safeguards to assure that Nasby will not be subject to any potential influence or control by Thomas L. Root in the future. Among these are the transfer of Nasby shares from Kathy G. Root and Arlene M. Geer, Trustees of the trusts established for the benefit of the Root minor children, to Thomas J. Stoll, Esquire, Trustee, an independent individual, pursuant to The Root Family Irrevocable Trust. Section Eighth of The Root Family Irrevocable Trust prohibits any Beneficiary (i.e., Kathy G. Root or any of the Root minor children) from directing the Trustee in the discharge of his duties, vesting all voting rights for any stock deposited in the Root Family Irrevocable Trust in the Trustee, Mr. Stoll. The Trustee is further prohibited from selling or otherwise conveying any Nasby stock to any Beneficiary, any Settlor (i.e., Kathy G. Root or Arlene M. Geer), to Thomas L. Root, or any member of the immediate family of any of the foregoing. See PVN Ex. 6, p. 4; Appendix D, pp. 6-7; PVN Ex. 7, pp. 3-4. Restrictive legends on the Nasby shares of stock to be held by The Root Family Irrevocable Trust will so be imposed by Nasby prohibiting the transfer or conveyance to Thomas L. Root. See PVN Ex. 9, Appendix A, p. 2.

8. Also, the last Will and Testament of Joanne L. Root and Thomas F. Root, the parents of Thomas L. Root and grandparents of the offspring of Thomas L. and Kathy G. Root, have been amended to prohibit any transfer or conveyance of any Nasby stock they own individually and jointly, to Thomas L. Root, or any member of his immediate family upon the death of either Joanne L. Root or Thomas F. Root. See PVN Ex. 8, p. 6; PVN Ex. 9, pp. 1-2 and Appendix A, p. 1 thereto. A corresponding restrictive stock legend, prohibiting the transfer or conveyance of Nasby stock they own (25 shares collectively) or later acquire, to Thomas L. Root or any members of his immediate family, has also been agreed to by Joanne L. Root and Thomas F. Root with Nasby. See PVN Ex. 9, pp. 1-2 and Appendix A, pp. 1-2 thereto. Joanne L. Root has also voluntarily resigned her positions as a director and Secretary of Nasby effective July 2, 1996.


III. Conclusions

9. Nasby has shown that Thomas L. Root is in no position to influence the corporation's affairs. Nasby has also demonstrated that Root's transfers of stock and his departure as an officer and director has no relation to any scheme to allocate control over the licensee. Finally, Nasby has shown that, since his resignation as an officer and director of Nasby, Thomas L. Root has had no role in the operation of the corporation. There remains no genuine issue of material fact for determination at hearing.

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10. Accordingly, IT IS ORDERED THAT 1) the February 26, 1997 amendment IS ACCEPTED; 2) the Motion for Summary Decision IS GRANTED and the application for renewal of license of Station WSWR(AM) at Shelby, Ohio, IS GRANTED; 3) the transfer of control applications ARE GRANTED, and this Proceeding IS TERMINATED. ¹/

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Edward Lutcn
Administrative Law Judge

¹ In the event exceptions are not filed within (3) days after the release of this Initial Decision, and the Commission does not review the case on its own motion, this Summary Decision shall become effective (30) thirty days after its release pursuant to Section 1.276(d) of the Commission's Rules.